



*Restless in Seattle: Labor, the
Environment, and the WTO*

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by William H. Lash III¹

As trade ministers converge in Seattle in late November for the World Trade Organization Ministerial Conference, they will address a very busy agenda. The ministers are prepared for negotiations on the usual WTO fare of tariffs, subsidies, and trade barriers. However, in Seattle they will face unprecedented and visible opposition to the WTO. The intersection of trade with labor and environmental issues will pose great challenges to the WTO.

U.S. Deputy Secretary of Commerce Robert Mallet states that new trade agreements must address environmental protection and workers' rights: "We have got to demand certain levels of protection. We have to convince [developing states] that raising working conditions and protecting the environment in the long run are sound economic decisions for their own economies."² While the trade ministers of the developing world are undoubtedly interested in reaching higher standards of living through international trade, they should be doubtful that labor and environmental harmonization under the WTO will be the answer.

Labor and the World Trade Organization

Labor interests have been unsuccessfully attempting to gain a toehold in the WTO since the body's creation. Earlier efforts to force the labor agenda sputtered as free trade advocates and developing states opposed the attempts to create a WTO Committee on Labor. These critics argued that the labor activists were attempting to use global labor standards to create new trade barriers. Under this failed framework, nations that did not adhere to global labor standards on child labor, collective bargaining, etc. would be labeled as engaging in "social dumping."

Social dumping assumes that the lack of western labor standards led to artificially depressed labor costs.³ According to Richard Feldman of the Workers' Center of the AFL-CIO, suppression of labor rights "is as much a subsidy as giving cash."⁴ Labor activists argue that this state-sanctioned

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wage depression is a form of unfair trade practice that can only be remedied by either trade sanctions or the imposition of countervailing duties. By imposing these duties, import prices would reflect the true costs of production.

At the Singapore Ministerial meeting in December 1996, labor issues were quietly tabled and no new negotiations on the topic were begun. However, the door was left open to labor by the trade ministers.

The WTO agreed that members would follow core labor standards as established by the International Labor Organization. This move placated some members, as it showed that the WTO was mindful of labor concerns. But labor activists recognized that this step was largely aspirational and lacked enforcement powers. The ILO has no ability to apply trade sanctions or take steps to protect domestic industries and their employees. Yet, as labor activists observe, the ILO has ejected Burma for its forced labor practices while that country remains a member of the WTO.

Over the next two years, labor interests pressed the issue in other non-WTO forums. They pushed for the inclusion of labor issues in future trade agreements such as the accession of Chile into the North America Free Trade Agreement (NAFTA). In the United States, the zeal of labor activists in the face of clear congressional opposition led to the defeat of fast track authority for President Clinton. Labor activists even boasted of killing fast track.

President Clinton, mindful of this defeat and the importance of the labor vote, stated at the June 1999 ILO Conference, “We must put a human face on the global economy, giving working people everywhere a stake in its success, equipping them all to reap its rewards, providing for their families the basic conditions of a just society.”⁵ USTR Charlene Barshefsky has similarly noted: “Development of the trading system must come together with efforts to ensure respect for internationally recognized core labor standards... We are working to build an international consensus that will enable the WTO to address the relationship between trade and labor issues.”⁶

Commerce Secretary William Daley has similarly gone on record, saying, “We want a work program in the WTO which addresses trade issues and their nexus with labor issues, including further work on how the implementation of core labor standards affects trade flows.”⁷

The administration agreed to propose the formation of a WTO working group on labor. This initiative poses grave threats to free trade and the WTO. A working group on labor is the nose of the camel under the tent. The ultimate goal of this effort is the creation of a WTO Agreement on Labor or a permanent committee on trade and labor. One only needs to look back four short years to the then-temporary Committee on Trade and the Environment for evidence of this pernicious pattern of permanence. The temporary committee became permanent after only two years and is now the locus of many new and previously unimagined trade disputes.

The Clinton administration also supports institutional links between the WTO and the ILO with mutual observer status. The linkage of labor and the WTO seeks to co-opt the prestige and power of the WTO to erect new trade barriers under the umbrella of free trade. The United States has long linked trade privileges and labor under programs such as the Generalized System of Preferences (GSP). Under this program, certain imports from developing states received preferential duty treatment in exchange for protecting intellectual property and labor rights. This carrot was initially effective and governments agreed to these standards to export duty-free or at lower tariffs into the United States. But over the years, as the GATT and now the WTO have lowered tariffs globally, the carrot has simply become less attractive. Pledging to adopt U.S. standards and annual review of a country's labor practices became less expedient when the only perceived benefit was the lowering of tariffs from 4 percent to 2 percent or less. With the loss of the viability of the GSP carrot, the potential "stick" of the WTO held more appeal for labor advocates.

The President's Export Council recently asserted, "There is a mutually reinforcing relationship between core labor standards and trade liberalization so that adherence to such standards does not negatively affect the economic performance of developing countries."⁸ The Council is partially correct. Trade liberalization will promote global prosperity, which in turn promotes labor standards. A tenacious focus on labor issues at the WTO may increase suspicion of developing states and hamper future trade liberalization.

By thwarting the extension of free trade, labor advocates unwittingly stifle their very goals. As stated by noted economist Murray Weidenbaum, "Intentionally or not, the current-day protection-

ists would delay the development of the poorer economies and thus deter their adoption of more enlightened labor strategies.”⁹ By conditioning trade on adoption of U.S. labor rights, the door would effectively be closed on the world’s poorest nations. As WTO members, the developing states may recognize the aspiration to core labor standards, but they cannot make the economic or political leap to these standards overnight.

The hypocrisy of the clamor for greater linkage of trade and labor standards is quite striking. In the United States, many states still use prison labor, and government contractors are required to make some purchases from the Federal Prison Industries. Will the United States still be in favor of a WTO labor policy if our domestic policies are called into question by our trading partners?

A WTO Working Group on Labor would start tearing away at the consensus of the WTO. Enforceable global labor standards would require harmonization among all WTO members. Yet variations in labor standards reflect different worker productivity levels, market realities, and the needs of disparate economies. Countries that are more agrarian necessarily operate under different labor expectations than do their industrialized partners. Equalizing standards under the rubric of the WTO may be impractical and unsound.

Trade and the Environment

Since its inception, the WTO has recognized the linkage of trade and the environment. From its initial temporary status, the permanent Committee on Trade and the Environment has emerged as an active and controversial part of the WTO. Environmental activists assert that the WTO weakens domestic and international environmental regulation and that rapacious global enterprises prevent sustainable development.

One argument offered by environmental activists is that by lowering tariffs on natural resources such as lumber or fish, demand for these products increases. For example, environmentalists assert that this increased demand resulting from lower tariffs leads to overfishing. While there is a trade-based culprit in the overfishing debate, the blame should not be placed on lowered tariffs from free trade and the WTO. The blame should more correctly be placed on unfair trade. Unfair

trade from government fishing subsidies has encouraged overfishing. The challenge to sustainable development in this context is a challenge faced by other sectors of the economy that are artificially buoyed by subsidies. According to a World Bank study, approximately \$14–20 billion is provided annually in fishing subsidies. These subsidies constitute 20 to 25 percent of all global fishery revenues.¹⁰ Elimination of these subsidies, not the establishment of a WTO environmental agreement, is the more effective answer.

The United States is promoting another initiative of the Committee on Trade and the Environment. A coordinated strategy of the USTR and the Environmental Protection Agency has been the concept of environmental impact statements of trade agreements. The administration believes that the CTE should study the environmental impact of trade. This proposal again permits opponents of free trade to attack the benefits of the WTO by treating trade as posing some sort of environmental risk.

Trade is the best and surest way of protecting the environment—an idea stated eloquently in a recent article in *The Economist*: “For richer, for cleaner.”¹¹ A state that is prosperous is better able to support conservation. Economists have conclusively linked a sound economy with environmental quality.

WTO Disputes and Environmental Standards

Critics ranging from Pat Buchanan to Ralph Nader assert that the WTO weakens U.S. environmental standards. According to the anti-trade organization Public Citizen, “Not a single public health, safety or environmental regulation that has been challenged before the WTO has been upheld; all have been found to be ‘trade barriers.’”¹²

This trend is not at all disturbing. Rather, it is encouraging. It shows that the WTO dispute settlement mechanism is being utilized to remove trade barriers, and that WTO members are very selective when challenging the environmental standards of their trading partners. Only the clearest cases of arbitrary trade barriers are proceeding to conclusion at the WTO dispute panels. This selectivity rivals any tribunal in the world.

The first case decided by a WTO panel involved the United States Environmental Protection

Agency rules on imported gasoline. This case, brought by Venezuela and Brazil, asserted that EPA regulations on reformulated gasoline required imported fuel quality to be pegged to a 1990 U.S. baseline standard rather than individual refinery baselines. Venezuela asserted that the guidelines placed imports at a disadvantage in U.S. markets. The WTO panel agreed that the U.S. gasoline regulations discriminated against foreign refiners. In this early test of compliance with WTO reports, the EPA issued new pollution rules for imported gasoline. Pursuant to the new regulations, foreign refiners will have more flexibility in meeting the overall guidelines for reducing pollution-causing chemicals in conventional gasoline and will be allowed to contain the same level of pollutants as U.S.-refined gas. Contrary to the statements of WTO critics, the EPA did not change U.S. rules on cleaner-burning “reformulated” gas despite a determination by the WTO that they were similarly discriminatory. Because the reformulated gas rules expired at the end of 1997, the EPA had no need to rewrite the rules.¹³

Recently the WTO appellate body ruled against the U.S. law banning imports of shrimp not caught in turtle-safe nets. That WTO action has galvanized many environmental activists in their opposition to the organization. They assert that the decision demonstrates that the WTO weakens environmental protection. According to the World Wildlife Fund, “The ruling reveals the profound bias of the WTO against environmental policies, and in favor of ‘free trade’ at any cost.”¹⁴

The shrimp-turtle dispute did not ban the linkage of trade and the environment. An appellate body of the WTO did determine that the questioned rule “serves an environmental objective that is recognized as legitimate under (WTO rules).” However, the WTO appellate body ruled that “this measure has been applied by the United States in a manner which constitutes arbitrary and unjustifiable discrimination between members of the WTO.”¹⁵

The U.S. failed to adopt less trade-restrictive and less arbitrary measures to conserve sea turtles. For example, alternative sea turtle conservation efforts by other nations were not recognized by the United States. Additionally, the United States only negotiated a handful of turtle-protection agreements with WTO members and banned shrimp imports regardless of whether the shrimp had been harvested by turtle extrusion devices or not, if the state of origin failed to receive U.S. certification.

The WTO was understandably concerned with this arbitrary denial of trade benefits.

Contrary to the environmental critics, the shrimp-turtle case was a victory for the green movement. The WTO appellate body accepted the legitimacy of the U.S. environmental policy. Unfortunately this opens the WTO door for other environmental trade restrictions.

The Committee on Trade and the Environment

From its inception, the WTO has tried to balance the goals of promoting trade and protecting the environment. The agreement establishing the WTO recognizes that:

Relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.¹⁶

WTO members also formed the Committee on Trade and Environment (CTE) to study the relationships between these issues. They acknowledged that measures necessary to protect the environment may conflict with the provisions of the General Agreement on Tariffs and Trade.

Accordingly, the CTE was charged to “identify the relationship between trade measures and environmental measures in order to promote sustainable development,” and to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable, and nondiscriminatory nature of the system. They specified that “the Working Party shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.”¹⁷

Ecolabeling

Environmental labeling, or ecolabeling, predates the WTO and poses a great institutional challenge. At the Rio de Janeiro Earth Summit in 1992, most nations present adopted Agenda 21, which urged governments “to expand environmental labeling...to assist consumers to make informed

choices.” There is nothing inherently wrong with ecolabeling, as international trade expert and economist Jagdish Bhagwati notes:

In principle, [ecolabeling is] fine, because it’s a matter of supplying information. The fact is that consumers, who are increasingly interested in environmental issues, want information on how things are produced to be able to make choices. That we can’t object to. So let them decide what they want to buy, rather than use trade sanctions to keep products out.”¹⁸

The CTE is generally in agreement that voluntary ecolabeling should not restrict market access.

Ecolabeling has emerged as a priority for the European Union at the Seattle Ministerial. Mandatory environmental labeling is a dangerous trade barrier. For example, ecolabeling assumes that there is a harmonized global standard of production, but many (perhaps most) production processes for competing products vary with the nation of origin. There is a legitimate concern that developed states, the ones urging ecolabeling, will use this process to exclude competing products from developing states.

By pushing for global environmental standards in production, the basic trade doctrine of comparative advantage may be watered down or ignored.

For example, assume that two nations are both producing steel. The advanced western country’s steel industry may utilize hydroelectricity or another “environmentally friendly” method of producing energy. Steel producers in developing nations may be using coal or another source of energy that is considered to have a “heavy environmental footprint.”

Mandatory ecolabeling would require both states to disclose methods of production, and have the developing state run the risk of its product being banned by western nations. Similarly, as standards for ecolabels increase, developing states will have to struggle to meet newly revised criteria that often elude even the most technologically advanced producers. The USCIB asserts that more than 25 regional ecolabeling programs operate globally with no common criteria or standards. Companies failing to adhere to these guidelines face inclusion on a McCarthyite “eco-blacklist.” Former USCIB President Abraham Katz notes: “Environmental labeling programs have an undeniable impact on trade and have posed special obstacles to U.S. companies doing business internationally. We believe that in their current form, eco-labels will continue to disadvantage U.S. com-

panies, while rendering little if any benefit to the environment.”¹⁹

The doctrine of transparency is also jeopardized by the injection of environmental issues into the WTO. Transparency requires that laws regarding imports and trade be visible and clear. The WTO Agreement on Technical Barriers to Trade (TBT) recognizes that no country should be prevented from taking measures necessary to ensure the quality of its exports; or to protect human, animal, or plant life or health; or the environment; or to prevent deceptive practices—at the levels it considers appropriate.²⁰

However, these restrictions are subject to the requirement that they not be applied in a manner that would constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

Technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks nonfulfillment would create. The recognized legitimate objectives are: national security requirements; the prevention of deceptive practices; protection of human health or safety; animal or plant life or health; and the environment.

The United States, Brazil, and Canada support the TBT Agreement. They argue that ecolabels be transparent and nondiscriminatory. An approach to ecolabels offered by Argentina would require the establishment of new guidelines. To promote nondiscriminatory ecolabeling, the labels would have to meet “ex ante transparency during their development; equivalency of standards and special and differentiated treatment for developing countries.”²¹

Multilateral Environmental Agreements and the WTO

Many multilateral environmental agreements (MEAs) such as the Montreal Protocol on Ozone Depletion, the Convention on International Trade of Endangered Species, and the Basel Convention on Toxic Waste include trade measures. The WTO has been studying the relationship between trade and MEAs. The CTE is reviewing the potential for conflict between these agreements and the WTO dispute settlement mechanisms.

Because of the widespread use of trade measures in MEAs, the CTE realizes that the WTO

would be affected by the reach and scope of MEAs. At the Seattle Ministerial Conference this relationship will be examined further. States such as Canada support the use of strong trade measures in MEAs and assert that dispute settlement provisions in MEAs play a different and less significant role than dispute settlements at the WTO. Other states such as Norway advocated an approach of mutual support between MEAs and the WTO dispute settlement mechanism. Norway favored multilateral rules and international cooperation as a way of reducing the risk that countries take measures that affect their trading partners without their consent.

Newly industrializing states such as India and Brazil were less concerned with the debate on MEAs versus the WTO. They believe that the MEAs are operating effectively without WTO attention. Similarly, Venezuela concluded that “WTO rules already provided sufficient flexibility for environmental protection measures.”²² The European Union has long maintained that “trade measures can be necessary to achieve the environmental objective of these agreements.” At the CTE, the European Union continued to support accommodation of trade measures taken pursuant to MEAs within the WTO. Hong Kong and the United States are both committed to see that MEAs not be abused as a back door to circumvent WTO rules and obligations.²³

To avoid further conflicts between MEAs and the WTO, MEA signatories should be able to comply with the WTO without being considered in violation of trade agreements when involved in disputes with other signatories. Environmental agreements, however, should not be used as a standard for nations that have not agreed to be bound by their terms. If an environmental agreement calls for banning certain imports based upon scientific evidence that these imports are a threat to human health, the ban will survive WTO challenge even when applied to imports from nonsignatories. A multilateral ban lacking these elements should be open to WTO challenges.

If an MEA such as CITES (Convention on International Trade of Endangered Species) imposes trade measures on nonsignatories, the offended nation should be allowed to challenge the barrier at the WTO. In the event that a WTO challenge is successful, the imports would not be automatically allowed into the objecting state. The importing state may still comply with its obligations under the multilateral environmental agreement. Instead, the complaining state should receive

compensation at the WTO.

A recently released WTO Report announces that trade liberalization reinforces the need for environmental cooperation. According to the WTO Secretariat, the real-world linkages of trade and the environment—and the answer to the question of whether trade is beneficial or negative for the environment—is “a shade of grey.”²⁴

This olive branch to ameliorate tensions between trade and the environmental movement presents no new findings in either area. The report determines that environmental degradation was not caused by international trade as such, but by various market and policy failures, such as subsidies or a lack of environmental accountability.²⁵

While the report does not support across-the-board harmonization of environmental standards, it finds that proper environmental standards at the national and international levels are essential to sound environmental policy. Many claims of the environmental movement are explicitly criticized by the report. For example, the WTO states that “trade barriers generally make for poor environmental policy.” Trade sanctions can at best only partially correct market and policy failures. Moreover, these sanctions will come at a high cost to consumers. Similarly the report finds that “little evidence bears out the claim that polluting industries tend to migrate from developed to developing countries to reduce environmental compliance costs” because the “competitiveness effects of environmental regulations are minor for most industries.”

The report states that the WTO model of cooperation, “based on legal rights and obligations, could potentially serve as a model for a new global architecture of environmental cooperation.” The authors do not conclude that this new model would be part of the WTO.

Conclusion

Despite all of the efforts made to expand the reach of environmental and labor issues at the WTO, critics remain unsatisfied. Lori Wallach of Global Trade Watch, a Ralph Nader group, described President Clinton’s approach to these matters, saying, “For a year and a half he’s been making the same speech about trade and the environment, trade and labor, but while he’s talking the

talk, he's walking the global economy backward into the 19th century."²⁶ Such harsh criticism reveals the danger that anti-trade extremists pose to the WTO. Many of the activists that will gather in Seattle have no interest in seriously discussing the WTO. Rather, they seek the spotlight that only a global conference on trade will provide. Instead of genuine engagement and debate on the linkage of trade with labor and environmental issues, they trumpet their "Global Peoples' Protest by the Puget."²⁷

The administration's efforts to placate these voices would diminish the effectiveness of the WTO and its credibility in the eyes of supporters and critics alike. As thousands of activists prepare to disrupt and protest the Ministerial Conference with their screams of "No New Round," all parties involved will certainly be restless in Seattle.

Notes

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